

KANTOR, DAVIDOFF, WOLFE
MANDELKER & KASS, P.C.
Matthew C. Kesten [MK-6099]
Daniel S. Kokhba [DK-5501]
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New York, NY 10017
212-682-8383
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MIN YU XIAO,

Docket No. 07 Civ 9430 (RS)

Plaintiff,

AMENDED ANSWER

-against-

LUCKY CHATHAM REALTY CORP. and
RICHARD T. WONG,

Defendants.
-----X

Defendants, by their attorneys, KANTOR, DAVIDOFF, WOLFE, MANDELKER & KASS, P.C., as and for their answer to the complaint herein, allege as follows:

1. Defendants neither admit nor deny the allegations contained in paragraphs 1, 2, 3, and 4 of the complaint, as said allegations contained legal conclusions to which a response is not required, except deny the claims or suggestions in paragraphs 1 and 2 that Defendants owe back wages to plaintiff.

2. Defendants deny the allegations contained in paragraph 5 of the complaint, except admit that defendant Lucky Chatham is a domestic corporation and that defendant Lucky Chatham leases real estate and has its place of business in the City, County and State of New York.

3. Defendants deny the allegations contained in paragraph 6 of the complaint, except admit that defendant Wong is a natural person, who resides in the City, County and State of New York, and was and is the principal of Lucky Chatham.

4. Defendants deny knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph 7 of the complaint, except admit that Plaintiff is a natural person, and that defendant Lucky Chatham employed plaintiff on a part time basis, between April 1, 2004 and July 20, 2005, but deny that plaintiff was employed by defendant Wong and, upon information and belief deny that plaintiff was employed by a predecessor of defendant Lucky Chatham.

5. Defendants deny the allegations contained in paragraphs 8, 9 10, 11, 14, 15, 17 18, 19, 21, 23, 25, 27, 28, 30, 32, 34 and 35 of the complaint.

6. Defendants admit the allegations contained in paragraph 12 of the complaint, except deny that defendant Lucky Chatham and Lucky Mott Realty LLC are owned (in whole or in principal part) by the same person or persons.

7. Defendants deny the allegations contained in paragraph 13 of the complaint, except admit that defendants provided plaintiff with a room.

8. With respect to paragraphs 16, 20, 22, 24, 26, 29, 31 and 33 of the complaint, Defendants repeat and reallege the allegations set forth above, as if fully set forth herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. Plaintiff's claims are barred in whole or in part by the statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. As a result of the failure to state a claim under the Fair Labor Standards Act, there are no federal claims to which plaintiff's claims for relief under State law can be appended, and the Court should abstain from hearing any such claims.

WHEREFORE, Defendants respectfully demand judgment in their favor and against plaintiff, dismissing the complaint, awarding Defendants their costs and disbursements incurred herein, and granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 21, 2007

KANTOR, DAVIDOFF, WOLFE,
MANDELKER & KASS, P.C.

By: 

Matthew C. Kesten [MK-6099]

Daniel S. Kokhba [DK-5501]

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Attorneys for Defendants

TO: LEVY DAVIS & MAHER, LLP
880 Third Avenue
New York, NY 10022
212-371-0033
Attorneys for Plaintiff

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JOAN ABBATEMARCO, being duly sworn, deposes and says:

1. I am not a party to this action, am over 21 years of age and reside in Richmond County, New York.

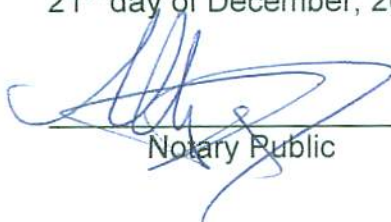
2. On the 21st day of December, 2007, I served the within **CROSS-MOTION, AFFIDAVIT, AFFIRMATION AND EXHIBITS** by mailing a true copy, by first-class mail, to each of the following persons at the last known address set forth after each name:

Levy Davis & Maher, LLP
Attorneys for Plaintiff
880 Third Avenue, 9th Floor
New York, NY 10022



JOAN M. ABBATEMARCO

Sworn to before me this
21st day of December, 2007



Notary Public

MATTHEW C. KESTEN
Notary Public, State of New York
No. 02KE4841667
Qualified in Westchester County
Commission Expires June 30, 2011